

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-11314-PBS

ST. PAUL TRAVELERS, as successor in
interest to ATLANTIC MUTUAL
INSURANCE CO. Marine Division, subrogee
of IBEX LLC, and IBEX, LLC

Plaintiffs

v.

FAIRHAVEN SHIPYARD, INC., and A.I.
MARINE ADJUSTERS, INC., a member of
AMERICAN INTERNATIONAL GROUP,
INC.,

Defendants

JOINT STATEMENT OF PARTIES
PURSUANT TO L.R. 16.1(D)

(A) Nature and Bases of Claims and Defenses:

(1) Plaintiff's Claims Against:

(a) Fairhaven Shipyard:

- (i) Count I – Breach of Contract for conducting defective welding resulting in fuel leaks;
- (ii) Count II – Breach of Warranty in performance of repairs not in a workman-like manner; and
- (iii) Count III – Negligence in conducting welding repairs.

(b) A.I. Marine:

- (i) Count IV – G.L. c.93A, §11. Unfair method of competition and/or unfair or deceptive act or practice by entering into settlement agreement then withdrawing and refusing to honor it.

(2) Defenses:

(a) Fairhaven Shipyard:

Waiver, laches, assumption of risk, failure to give notice or opportunity to cure, intervention, supervening or third-party causes, lack of joint survey, and standard Rule 12(b)(1)-(6) defenses.

(b) A.I. Marine Adjusters:

A.I. Marine Adjusters, Inc. provided adjusting services to Fairhaven Shipyard with regard to a Yacht Dealers and Marina Operators insurance policy issued to Fairhaven Shipyard and covering the timeframe of the plaintiff's allegations. A.I. Marine initially believed that the plaintiffs' claims were covered under this policy. However, A.I. Marine has now determined that the policy provides no coverage for the plaintiffs' claims. It is the understanding of A.I. Marine that a general liability policy being handled by a different company may provide coverage for the plaintiffs' claims. In any event, A.I. Marine submits that the plaintiff, St. Paul Travelers, itself a sophisticated insurance company, is pursuing the wrong insurance policy by naming A.I. Marine as a defendant in this action.

(B) Possibility for Prompt Resolution:

Plaintiff is willing to consider referral to a magistrate or to a mediator.

(C) Disclosures:

Plaintiff proposes that Rule 26 disclosures conducted on or before November 5, 2004.

(D) Proposed Discovery Plan:

(1) The plaintiff proposes no changes proposed to Rule 26(a) or Rule 26(a)(1) disclosure requirements. The parties propose to conform to the limits on discovery set forth in F.R.C.P. 26(b).

(2) Plaintiff intends to conduct discovery against Fairhaven Shipyard relative to its conduct of repairs and against A.I. Marine relative to its handling, evaluation and disposition of the claim.

Plaintiff proposes non-phased discovery on the following schedule: Fact Discovery through June 30, 2005; expert disclosures and discovery completed by August 31, 2005; dispositive motions filed by September 30, 2005.

A.I. Marine proposes phased discovery. The first phase should be directed towards two things: (1) the underlying claims against Fairhaven Shipyard; and (2) whether Fairhaven Shipyard has insurance coverage for the plaintiffs' claims. If the case does not terminate following the first phase of discovery, the second phase of discovery should be directed toward any further information needed to prepare for trial.

A.I. Marine proposes that Summary Judgment motions should be filed by A.I. Marine by January 31, 2005; and plaintiffs should respond and submit any cross-motion for summary judgment by February 21, 2005.

(3) Depending upon information received during disclosures or discovery, plaintiff

may seek to amend its complaint by the addition of another party.

Respectfully submitted,

Plaintiffs,

ST. PAUL TRAVELERS as successor in
interest to ATLANTIC MUTUAL
INSURANCE CO. Marine Division, subrogee
of IBEX LLC, and IBEX, LLC

By their attorney,

s/ William Hewig, III

William Hewig, III (BBO# 541910)
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Defendant,

FAIRHAVEN SHIPYARD, INC.

By its attorney,

s/ John F. Leahy

John F. Leahy, Esq. (BBO # 289860)
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Boston, MA 02110

Defendant,

A.I. MARINE ADJUSTERS, INC.

By its attorneys,

s/ Robert M. Elmer

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